



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 10<sup>th</sup> March, 2025*

*Pronounced on: 27<sup>th</sup> June, 2025*

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**CRL.M.C. 3501/2018, CRL.M.A. 12712/2018 (stay),  
CRL.M.A. 5811/2019 (condonation of delay), CRL.M.A.  
42392/2019 (condonation of delay)**

**INNOVENTIVE INDUSTRIES LTD.**

(Formerly known as Arihant Domestic Appliances Limited),

A public company registered under

the Companies Act, 1956, and

having its registered office at:

Gate No. 56/4/5, Pimple Jagtap,

Taluka-Shirur, Pune-412 208, Maharashtra,

Acting through its Liquidator, Mr. Dhinal Shan .....Petitioner

Through: Mr. Mehul Parti and Ms. Harshita  
Malik, Advocates.

versus

1. **GOVT. OF NCT OF DELHI**

Through its Standing Counsel

Room No. 437,

Lawyers' Chamber, Block-I,

High Court of Delhi-110003

.....Respondent No.1

2. **IFCI FACTORS LIMITED**

Having its registered office at:

IFCI Tower, 10<sup>th</sup> Floor,

61, Nehru Place,

New Delhi-110019

...Respondent No.2

3. **MR. CHANDU LAXMAN CHAVAN**

Flat No. 18 & 20

C-Wing, Ambience Emp.,

Behind Express Garden, Ghorpadi,

Pune-411001, Maharashtra

Also at:

B-5, Laxmi Niwas,

Opposite Kalyani Steels, Mundhwa,



Pune-411036, Maharashtra

...Respondent No.3

4. **MR. RAVINDRA WAMAN KATRE**

Disha A 14 129 130 131, Kothrud,  
Pune-411029, Maharashtra

Also at:

SN-23/3+4, J-9, Phase-1,  
Pinnac Memories, Kothrud,  
Pune-411029, Maharashtra

..Respondent No.4

5. **MR. SANJAY WAGHULADE**

Plot No. 464, S.No. 26A,  
Pradhikaran, Nigadi,  
Pune-411044, Maharashtra

....Respondent No. 5

Through: Ms. Meenakshi Dahiya, APP for the  
State.

Mr. Sharique Hussain, Advocate for  
R2.

Mr. Shikhil Suri, Senior Advocate  
with Mr. Saurabh Jha, Ms. Madhu  
Suri, Ms. Ishita Ahuja and Mr. Vibhor  
Choudhary, Advocates for R3 & R4.

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**CRL.M.C. 4379/2024, CRL.M.A. 16636/2024 (stay)**

**CHANDU LAXMAN CHAVAN**

S/o Laxman Chavan

R/o C-20, Ambience Emphyrean,  
Sopan Baug, Ghorpadi, Pune,

Maharashtra-411001

.....Petitioner

Through: Mr. Shikhil Suri, Senior Advocate  
with Mr. Saurabh Jha, Ms. Madhu  
Suri, Ms. Ishita Ahuja and Mr. Vibhor  
Choudhary, Advocates.

versus

1. **THE STATE GOVERNMENT OF NCT OF DELHI**

Through Standing Counsel (Criminal)

Email ID:

dhcprosecutiondelhipolice@gmail.com .....Respondent No.1



2. **IFCI FACTORS LIMITED**  
Having its registered office at:  
IFCI Tower, 10<sup>th</sup> Floor,  
61, Nehru Place, New Delhi-110019 ...Respondent No.2
3. **INNOVENTIVE INDUSTRIES LIMITED**  
(Formerly known as Arihant Domestic  
Appliances Limited)  
Having registered office at:  
Gate No. 56/4/5, Pimple Jagtap,  
Taluka-Shirur, Pune-412208, Maharashtra  
Acting through its Liquidator Mr. Trupal J.  
Patel, having office at: C/505-506, The  
First, B/h ITC Narmada, Nr. Keshav Baug  
Party Plot, Vastrapur, Ahmedabad, Gujarat  
380015 ...Respondent No.3
4. **MR. RAVINDRA WAMAN KATRE**  
Disha A 14, 129, 130, 131, Kothrud,  
Pune-411029, Maharashtra.  
Also at: SN-23/3+4, J-9, Phase-1,  
Pinnac Memories, Kothrud,  
Pune-411029, Maharashtra ...Respondent No.4
5. **MR. SANJAY WAGHULADE**  
Plot No. 464, S.No. 26 A,  
Pradhikaran, Nagadi,  
Pune-411044, Maharashtra ...Respondent No. 5  
Through: Ms. Meenakshi Dahiya, APP for the  
State.  
Mr. Sharique Hussain, Advocate for  
R2.  
Mr. Mehul Parti and Ms. Harshita  
Malik, Advocates for Respondent No.  
3.

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**CRL.M.C. 4381/2024, CRL.M.A. 16639/2024 (stay)**

**MR RAVINDRA WAMAN KATRE**  
Disha A 14, 129, 130, 131, Kothrud,



Pune-411029, Maharashtra,  
Also at: SN-23/3+4, J-9, Phase-1,  
Pinnac Memories, Kothrud,  
Pune-411029, Maharashtra

.....Petitioner

Through: Mr. Shikhil Suri, Senior Advocate  
with Mr. Saurabh Jha, Ms. Madhu  
Suri, Ms. Ishita Ahuja and Mr. Vibhor  
Choudhary, Advocates.

versus

1. **THE STATE GOVERNMENT OF NCT OF DELHI**  
Through Standing Counsel (Criminal)  
Email ID:  
dhcprosecutiondelhipolice@gmail.com .....Respondent No.1
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Having its registered office at:  
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First, B/h ITC Narmada, Nr. Keshav Baug  
Party Plot, Vastrapur, Ahmedabad, Gujarat  
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4. **CHANDU LAXMAN CHAVAN**  
S/o Laxman Chavan  
R/o C-20, Ambience Empyrean,  
Sopan Baug, Ghorpadi, Pune,  
Maharashtra-411001 ...Respondent No. 4
5. **MR. SANJAY WAGHULADE**  
Plot No. 464, S.No. 26 A,  
Pradhikaran, Nagadi



Pune-411044, Maharashtra

...Respondent No.5

Through: Ms. Meenakshi Dahiya, APP for the State.

Mr. Sharique Hussain, Advocate for R2.

Mr. Mehul Parti and Ms. Harshita Malik, Advocates for Respondent No. 3.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Petition bearing ***CRL.M.C. 3501/2018*** under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*), has been filed *on behalf of the Accused Company*, Innoventive Industries Limited ***through its Official Liquidator.***

2. ***The other two*** Petitions bearing ***CRL.M.C. 4379/2024 and CRL.M.C. 4381/2024***, have been filed on behalf of *Mr. Chandu Laxman Chavan and Mr. Ravindra Waman Katre, the two Directors* of Innoventive Industries Limited.

3. Petitioners are aggrieved by the ***Order dated 09.04.2018*** of the Ld. Metropolitan Magistrate, *vide* which they have been summoned under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as 'N.I Act'*) in Complaint Case under S.138 NI Act.

4. ***Briefly stated***, the Complainant/IFCI Factors Limited, Respondent No.2 (***Complainant***) issued a Sanction Letter dated 23.07.2009 for Domestic Factoring Facilities to the Petitioner Company, Innoventive Industries



Limited (*formerly known as Arihant Domestic Appliances Limited*). In terms of Clause 1(b) of the Sanction Letter dated 23.07.2009, in terms of which Petitioner Company, ***gave 30 security cheques of Rs.50,00,000/- each***, with a Letter of Undertaking to the Complainant/IFCI Factors Limited. Certain cheques in terms of the Sanction Letter dated 23.07.2009, were subsequently replaced by the cheques in question. The cheques were signed by Mr. Chandu Laxman Chavan (promoter of the Petitioner Company, Innoventive Industries Limited) and Mr. Sagar Shah (Finance Head), who had already quitted the Petitioner's Company in 2014.

5. The Complainant/IFCI Factors Limited presented the nine cheques in question, bearing No. 317556-70 and 3175572, all dated 08.05.2017 for a total amount of Rs.14 Crores to IDBI Bank, Shivaji Nagar Branch, FC Road, Pune, Maharashtra, which got dishonoured vide Memo dated 06.06.2017 for the reason "***Drawers signature differs***". Thereafter, Legal Notice dated 01.07.2017 was sent by the Complainant/IFCI Factors Limited, which was duly replied on 22.07.2017 by the Petitioner Company, Innoventive Industries Limited. However, the Complainant, IFCI Factors Limited went ahead and instituted the Complaint bearing C.C. No. 8898/2017 under Section 138 N.I. Act, in August, 2017, before the Court of Ld. MM.

6. On the service of the summons on the Complaint, the Liquidator appeared on behalf of the Petitioner Company, and apprised the Ld. MM about the *Corporate Insolvency Resolution Process (for short 'CIRP')* proceedings, which had already been initiated against it.

7. The Ld. MM in the Summoning Order dated 09.04.2018 noted the submissions made on behalf of the Petitioner, but referred to *M/s Indo Rama Synthetics vs. State of Maharashtra*, Criminal Writ Petition No. 1280/2016,



decided on 06.05.2016, wherein it was observed that the expression “*suit or proceedings*” in Section 446(1) under Chapter II of part VII of the Companies Act, 1956, did not include Criminal Complaints filed under Section 138 of the N.I. Act. It was held that *prima facie* all the ingredients for the offence under Section 138 of N.I. Act were established and consequently, summoned the Petitioner Company, Innoventive Industries Limited and the Directors, thereof.

8. *Aggrieved by the Summoning Order, the present Petitions have been filed on behalf of the petitioner Company, Innoventive Industries Limited through Liquidator and by the two Directors namely, Mr. Chandu Laxman Chavan and Mr. Ravindra Waman Katre.*

9. *The Petitioner Company, Innoventive Industries Limited has submitted that it* was incorporated under the Companies Act and registered at Pune. CIRP under the provisions of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as “IBC”*) got initiated by Admission Order dated 17.01.2017, the Adjudicating Authority (*National Company Law and Tribunal, Mumbai*) and subsequently, Moratorium in terms of Section 14 IBC was imposed. It is asserted that Mr. Dhinal Shah was appointed as interim Resolution Provisional and subsequently confirmed as Resolution Professional (*for short ‘RP’*).

10. It is further stated that after the Admission Order dated 17.01.2017 in terms of Section 17 IBC, the management of the affairs of the Petitioner Company and the powers of Board of Directors, got suspended and came to be exercised by erstwhile RP. The Banks where the Petitioner had the Bank Accounts, were duly informed. A Letter dated 06.05.2017 for closure of specified Bank Accounts, was sent to IDBI, by the RP.



11. A Legal Notice dated 01.07.2017 under Section 138 of N.I. Act, was received from the Complainant/IFCI Factors Limited calling upon the Petitioners to pay Rs.14 Crores along with the interest @24% p.a. w.e.f. 06.07.2017, till the date of payment.

12. The Petitioner Company and the Board of Directors, was in suspension and *RP (now Liquidator)* was In-charge of the Management and control of the affairs of the Petitioner Company. The RP responded to *Legal Notice and gave a Reply on 22.07.2017*, informing that the Petitioner Company is undergoing CIRP and in terms of Admission Order dated 17.01.2017, a Moratorium under Section 14 IBC had been declared prohibiting certain actions/ proceedings against the Petitioner as stipulated in the said Section and that breach of such Moratorium was punishable under Section 74 IBC. It was also clearly stated that the cheques were neither issued nor authorised by him. He called upon the Complainant, IFCI Factors Limited to refrain from commencing or continuing any proceedings against the Petitioner Company in regard to the cheques, which were the subject matter of the Legal Notice dated 01.07.2017.

13. The Petitioners have asserted that the cheques in question were neither issued nor authorised by the erstwhile RP acting for and on behalf of the Company, during its ongoing CIRP proceedings. In fact, the cheques in question were the *security cheques* given in 2009, much prior to the commencement of CIRP proceedings.

14. It is submitted that after receiving due intimation about the CIRP proceedings, the Complainant/IFCI Factors Limited had also participated in first three Meetings of the Committee of Creditors (COC) of the Petitioner and submitted its Claims against it, in the prescribed Form.



15. It is, therefore, manifest that the Complainant/IFCI Factors Limited unilaterally and malafidely, despite being aware that the Authority of erstwhile Directors/Officials of the Petitioner Company to issue cheques, had been revoked, presented the cheques dated 08.05.2017, for encashment, which for obvious reasons, got dishonoured.

16. The Complainant/IFCI Factors Limited also filed **CS(COMM) No. 88/2016** titled *IFCI Factors Ltd. vs. Innoventive Industries Limited & Ors.*, before this Court for seeking the Recovery. However, the Suit has been stayed *vide* Order dated 29.05.2017, in view of the commencement of CIRP proceedings and imposition of Moratorium.

17. In the meanwhile, no Resolution Plan was approved by COC of the Petitioner Company and since the CIRP period was to expire on 14.10.2017, Application bearing **IA No. 72/2017** under Section 33 IBC, was moved before the Adjudicating Authority by the erstwhile RP, for initiation of Liquidation of the Petitioner Company. The Adjudicating Authority on 08.12.2017 passed the Order under Section 33 IBC for commencement of liquidation proceedings and appointed the Liquidator.

18. ***The Summoning Order dated 09.04.2018 has been challenged on the grounds*** that despite being aware ***that during the Moratorium, no action could be taken for recovery of any amount from the Petitioner Company***, the Complainant/IFCI Factors Limited filed the Complaint under Section 138 of the N.I. Act. The imposition of Moratorium and commencement of IBC proceedings, have been completely ignored.

19. It is further contended that reliance on *M/s Indo Rama Synthetics* (supra) is misplaced, since it was in the context of Companies Act, 1956, which has been replaced by IBC. It is asserted that under the provisions of



IBC, the Complainant/IFCI Factors Limited's only remedy was to file a **Claim** before the RP so that it could be validly dealt with in accordance with the provisions of IBC.

20. It is further stated that the Ld. MM has erroneously relied on Section 35(1)(k) IBC, to hold that the initiation of Liquidation would not have any bearing to the Complaint under Section 138 of the N.I. Act. However, this provision cannot be interpreted in a manner by giving a complete go-by to Section 33(5) IBC. Section 238 IBC has the overriding effect over all other laws.

21. The **second ground** of challenge is that it is settled law that *undated post-dated cheques given as security*, would not attract Section 138 of the N.I. Act as no debt or liability exists on the date of handing over of the cheques. Under Section 138 of N.I. Act, it is mandatory that the cheques must have been issued in discharge of debt or liability. The cheques have to be presented within three months of the date of issue and this period cannot be altered by putting a date on the undated cheques, after a lapse of several years.

22. *It is, therefore, submitted that the Impugned Order dated 09.04.2018 be set-aside.*

23. The **Petitioners, Mr. Chandu Laxman Chavan and Mr. Ravindra Waman Katre, the Directors** have argued that they were not In-charge of the Management when the said cheques in question were presented, as it had already been taken over by CIRP and therefore, *the Summoning Order dated 08.04.2018 against them is liable to be set-aside.*

24. **The Respondent No. 2/Complainant, IFCI Factors Limited Company has however**, controverted all these arguments by asserting that



the criminal liability can be continued irrespective of the winding-up proceedings of a Company. The Directors continued to be liable and therefore, the Petitioners have been rightly summoned Magistrate under Section 138 of the N.I. Act, by the Ld. M.M.

25. Reliance has been placed on *P. Mohanraj & Ors. vs. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258 wherein the Apex Court observed that proceedings can be continued against the Directors when the company has gone into CIRP.

26. **Submissions heard and Record perused.**

27. The cheques in question, were claimed to have been issued by the Petitioner Company, Innoventive Industries Limited as *Security Cheques* in the year 2009, pursuant to the Sanction Letter dated 23.07.2009, in favour of the Complainant, IFCI Factors Limited.

***Cheques were Security Cheques to which S. 138 NI Act, is inapplicable:***

28. ***The first contention, which has been raised on behalf of the Petitioners***, is that these were security cheques given in 2009, which have been manipulated in the year 2017 when the dates and the amount have been filled up. It is claimed that in the year 2009, when the cheques were issued, there was no existing debt and liability and these Cheques could have been presented only within three months of date of issue and therefore, the cheques could *not* have been a subject matter of Complaint under Section 138 of N.I. Act.

29. This argument raised on behalf of the Petitioners, is completely fallacious. The concept of Security Cheques was explained by the Apex Court in the case of *Sripati Singh v. State of Jharkhand*, (2022) 18 SCC 614, wherein it was observed:



*“ 21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. **“Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment.** It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, **the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same.** On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.”*

30. The *Security Cheques* are only given to be utilised if subsequently, during the business transactions, certain liabilities exist which are not fulfilled by the Petitioners. In the present case as well, the entire objective of giving the security cheques was to secure any liability which may accrue in future and is not met by the Petitioners. The Complainants have specifically alleged about their being existing debt/liability on 08.05.2017, when the cheques were presented to the Bank.

31. *This contention of S.138 NI Act not attracted in respect of Security Cheques in the facts of present case, is absolutely not tenable.*

**Blank Cheques being Misused:**

32. *The second contention which is a connected argument on behalf of the Petitioners* is that these were blank cheques, which have been misused by the Complainant, IFCI Factors Limited.



33. *S.20 of NI Act provides for inchoate stamped instruments, which is as under:*

**20. Inchoate stamped instruments.**—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India] and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. **The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount:**

*Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*

34. S.20 NI Act therefore, holds the drawer responsible if subsequently the Blank cheque given by the Drawer is used by the drawee to whom it was given, and he cannot *per se* deny his liability in respect of such cheque.

35. The liability under a signed blank cheque was discussed in the case of *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197, wherein the Apex Court observed:

**“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.**



*34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

.....

*36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”*

36. Admittedly, the signed cheques were given by the Petitioner Company, Innoventive Industries Limited to the Complainant Company, IFCI Factors Limited. Therefore, for the Petitioners to claim that the cheques have been subsequently manipulated, is absolutely incorrect.

37. Moreover, the three months' period for presentation of the cheque, arises from the date mentioned on the cheque and to assert that the cheques have been presented way beyond three months from 2009 when they were issued, is again absolutely fallacious, and contrary to the very concept of *Security Cheques*. The three-month period for the validity of the cheque would commence from the date on the cheque. *This contention raised on behalf of the Petitioners, therefore, do not merit any consideration.*

***Commencement of IBC Proceedings:***

38. *The main argument raised on behalf of the Petitioners* is that the Complaint Case under Section 138 of N.I. Act could not have been filed in August, 2017 **once** CIRP had already been commenced on 17.01.2017 and moratorium was imposed.



39. Pertinently, the IBC proceedings got commenced in January, 2017 and subsequently, the powers of Board of Directors of the Company, Innoventive Industries Limited got suspended in terms of Section 17 IBC. The Management of the Affairs of the Petitioner Company got vested in the erstwhile RP and thereafter, the Liquidator. The intimation had been duly sent to the Banks especially IDBI Bank, Pune, by the RP.

40. The erstwhile Resolution Professional duly informed the Complainant/IFCI Factors Limited on 22.07.2017 about the initiation of the liquidation proceedings. Not only this, the Complainant/IFCI Factors Limited participated on three dates in the proceedings in CIRP and even submitted their claims.

41. The Complainant after six months of initiation of CIRP proceedings, issued Legal Notice on 01.07.2017 for initiation of Complaint under Section 138 of N.I. Act. ***Having done so, the question arises whether there existed any cause of action for initiation of proceedings under Section 138 of N.I. Act, in August, 2017 when the Company is already undergoing CIRP.***

42. This question was considered in the case of P. Mohanraj & Ors. vs. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258 wherein while considering the impact of proceedings under IBC on a corporate debtor (Company and its Directors), the Apex Court observed that in view of the legal impediment contained under Section 14 IBC, it would be impossible to continue the proceedings under Section 138 of N.I. Act or be instituted against the Corporate Debtor. However, it was further noted that such statutory bar would apply only to the Corporate Debtor while the natural persons mentioned in Section 141 NI Act, continue to be statutorily liable under Section 138 N.I. Act.



43. Two aspects emerged from this Judgment of *P. Mohanraj & Ors.* (supra); ***firstly***, that once the proceedings have been commenced under IBC, no proceedings under Section 138 of N.I. Act, can be commenced or continued against the Corporate debtor/Company. The ***second aspect*** is that the proceedings under Section 138 N.I. Act, may be continued against the natural persons mentioned in Section 141 N.I. Act.

44. In the present case as well, the CIRP proceedings commenced prior to S.138 proceedings when the Company got taken over by RP. In the light of *P. Mohanraj & Ors.* (supra), ***the proceedings against the Corporate Debtor i.e. the Petitioner Company, Innoventive Industries Limited could not have been commenced or continued.***

45. The connected aspect, however, which requires deliberation, is the status of the ***two Directors and whether they can be prosecuted in the absence of the Company being an accused.***

46. In *Aneeta Handa v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661, the Apex Court held that Section 141 NI Act deals with the offences by the Company. It makes the other persons vicariously liable for commission of an offence on the part of the Company. The vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and in a way, is warranted. It was observed thus:

***“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear***



*that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.”...*

47. While considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the Company is an accused person, the Apex Court in the case of Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 has further explained the vicarious responsibility of the Directors. The Court held:

*42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*

*43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*

*44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act,*



1881. In *Aneeta Hada (Supra)* , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the *Negotiable Instruments Act* has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

48. The observations made in the case of *Sunil Bharti Mittal (supra)* were endorsed in the case of *Shiv Kumar Jatia v. State (NCT of Delhi)*, (2019) 17 SCC 193, thus:

19. The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in *Sunil Bharti Mittal*. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role



*coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*

49. Likewise, in Himanshu v. B. Shivamurthy, (2019) 3 SCC 797, the Apex Court while noting that the Director can be held liable under S.141 NI Act only if he is in charge of or was responsible to the company for the conduct of the business of the Company as well as the Company, further observed that *“in the absence of the company being arraigned as an accused, a complaint against the appellant was not maintainable.”*

50. In Bijoy Kumar Moni v. Paresh Manna, 2024 SCC OnLine SC 3833, the Apex Court relying upon Aneeta Handa (Supra) held that *“the drawer Company which must be first held to be the principal offender under Section 138 of the NI Act before culpability can be extended, through a deeming fiction, to the other Directors or persons in-charge of and responsible to the Company for the conduct of its business. **In the absence of the liability of the drawer Company**, there would naturally be no requirement to hold the other persons vicariously liable for the offence committed under Section 138 of the NI Act.”*

51. The contention of the erstwhile Directors of the Petitioner Company is that after the admission order and imposition of Moratorium, they cease to have the control over the affairs of the Company and the proceedings under the NI Act were initiated after the imposition of Moratorium.

52. The law on the point of whether the proceeding under the NI Act can be commenced when the cheque was dishonoured after the initiation of the CIRP was discussed by the Apex Court in Vishnoo Mittal v. Shakti Trading Co., 2025 SCC OnLine SC 558. On similar facts, the proceedings under the



NI Act against the Director of a Company was quashed as the demand was raised after the imposition of the Moratorium. It was thus held:

*“11. The bare reading of the above provision shows that the appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (c) of the proviso to Section 138 NI Act. When the notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as the director of the corporate debtor as soon as IRP was appointed on 25.07.2018. Therefore, the powers vested with the board of directors were to be exercised by the IRP in accordance with the provisions of IBC. All the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of section 17 of the IBC. Additionally, we have been informed on behalf of the appellant that, after the imposition of the moratorium, the IRP had made a public announcement inviting the claims from the creditors of the Corporate Debtor and the respondent has filed a claim with the IRP.*

*12. Keeping in mind the above observations and distinguishing facts and circumstances of this case from that of **P. Mohan Raj**, we are of the considered view that the High Court ought to have quashed the case against the appellant by exercising its power under section 482 of the CrPC.”*

53. Co-ordinate Bench of this Court in the case of Govind Prasad Todi and Another vs. Govt. of NCT of Delhi and Another, 2023 SCC OnLine Del 3717, wherein similar facts were involved, observed that once the RP is appointed, he alone has the authority to operate the Bank Account; on the date of presentation, the Petitioners cannot be stated to be in control of the management and the affairs of the Company. It was therefore, held that the



Petitioners i.e. the Directors could not have been summoned under Section 138 of N.I. Act.

54. The facts involved in P. Mohanraj & Ors. (supra), are distinguishable on facts as in the said case the Complaint under S.138 NI Act was already pending when the IBC proceedings got initiated.

55. Applying the aforesaid principles to the facts in hand, herein Company as well the Directors were left with no control over the management and affairs of the Company, which got taken over by the RP/Liquidator, much prior to the presentation of the cheques. The Directors of the Petitioner Company, could not have been held liable, *once the proceedings under IBC had commenced, prior to institution of the Complaint under Section 138 of N.I. Act.*

56. Therefore, to say that the proceedings under Section 138 of N.I. Act can be continued against the Directors, would be against the principles of vicarious liability of the Directors for the debts of the Company, since the Directors can be only be held vicariously liable for the acts of the Company, once the Company has been found to be liable.

57. In the present case, the IBC proceedings had already got commenced in January, 2017 i.e. almost six months prior to the proceedings under S.138 NI Act. At the time when the Legal Notice dated 02.07.2017 was issued by the Complainant, the entire powers of Board of Directors, had come to be vested in the RP. Therefore, they were no powers either with the Company or that the Board of Directors and they had no managerial authority to pass any Board Resolution for repayment of the amounts under the impugned cheques.



58. In the circumstances, no vicarious liability can be attributed to the Directors in the absence of the Company, who are entitled to be discharged.

***Dishonour of Cheque due to ‘Insufficiency of Funds’.***

59. *In the end*, it is also pertinent to note that the proceedings under Section 138 of N.I. Act, can be commenced if the cheques are dishonoured on account of ‘*insufficiency of funds*’. In the present case, the Liquidator *vide* his Letter dated May, 2017, had informed the IDBI Bank, Pune for closure of the Bank Account. The cheque had the signatures of Mr. Chandu Chavan, Promoter and Mr. Sagar Shah (former Finance Head), but the Account under their signatures, had become inoperable. The Return Memo also shows that the reason for dishonour was not ‘*insufficiency of funds;*’ rather for ‘*Drawers signature differs*’ which is comprehensible on account of instructions given to the Bank, by RP. On this ground as well, the Petition under Section 138 of N.I. Act, is not maintainable.

**CONCLUSION:**

60. In the light of the aforesaid discussion, the Summoning Order dated 09.04.2018 is hereby set-aside against the three Petitioners who are discharged. The aforesaid three Petitions are accordingly, allowed.

61. The Petitions are accordingly, disposed of along with pending Application(s).

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 27, 2025/RS**